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10/693,971	10/28/2003	Nathaniel Kolmes	244413US23	5774

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EXAMINER

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ART UNIT PAPER NUMBER

3765

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/693,971
Filing Date: October 28, 2003
Appellant(s): KOLMES, NATHANIEL

MAILED
DEC 07 2006
GROUP 3700

J. Derek Mason
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 16 October 2006 appealing from the Office action mailed 14 December 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,260,344

Chakravarti

7-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chakravarti (6260344).

Chakravarti teaches a yarn (Figure 2) for use in a fabric glove (Figure 1), the yarn comprising a core (multiple 12's) having two fiberglass strands (Figure 2 shows four strands possible; Column 3, lines 47-49 teach strands of glass may be used) having a denier of about 50 to 1200 (Column 4, line 19) and two wire strands (Figure 2 shows four strands possible; Abstract teaches steel wire) having a diameter of between 0.0013 and 0.0036 inches (Column 1, lines 40-42) parallel to one another (Figure 2), and three non-metallic non-high performance fiber cover strands (Claim 1 teaches at least two wraps, which includes three wraps; figure 2 teaches alternating twist directions) having a denier of about 50-1200 (Abstract) wrapped about 6-13 tpi (Column 1, lines 62-63) in alternating directions to one another, wherein the wrapped cover strands are selected from polyester, polyester/cotton blends, nylon, acrylic, wool, and cotton (Column 3, lines 53-62). Chakravarti further teaches antimicrobial treatment (Abstract). While Chakravarti essentially teaches the invention as detailed, he fails to teach different types of antimicrobial treated fibers. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate different antimicrobial treated fibers in the yarn of Chakravarti, so as to enable its use in different environments. Acrylic reacts to certain

chemicals, and the ordinarily skilled artisan would have known to use a different antimicrobial treated fiber in its place, so as to enable a more widely available line of uses for the yarn.

(10) Response to Argument

First of all, Examiner agrees with Applicant's arguments in regards to the 112 first paragraph rejection. Specifically, where Applicant states "[he] is permitted to limit the claims to less than the whole originally disclosed, **particularly where, as in this case, the element being excluded was specifically recited as an alternative in the specification...**" (emphasis added by Examiner). Applicant has taught many different materials which can be used, all of which are alternatives of one another. He has elected to exclude acrylic, but the rest of acrylic's alternatives remain.

In regards to Chakravarti, Applicant argues no part of the rejection except for the use of acrylic by Chakravarti. Specifically Applicant states on page 6 that Chakravarti "requires that the yarn contain acrylic". While Chakravarti may teach acrylic, he never states that other alternative materials could not be used. Applicant then states that replacing the acrylic in Chakravarti with another material would destroy the reference, since its patentability depends on acrylic. Applicant supports this argument with the recitation of Column 2 line 66 - Column 3 line 6, which reads:

"The use of acrylic fibers for knitting gloves result in a softer and more comfortable fitting glove. Furthermore, it has been found that gloves made from these yarn composites exhibit good durability and demonstrate improved gripping power over prior art gloves.

It is believed that by using the antimicrobial treated spun acrylic fiber as wraps instead of as a core provides a softer glove with improved gripping ability."

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Examiner strongly disagrees. The patentability, the inventive step of Chakravarti is not that he uses acrylic, but rather where he uses acrylic. Chakravarti's inventive step is placing the cut resistant materials in the core, rather than in the wraps. By doing so, he exponentially increases the softness and comfort of the yarn, and subsequently the glove by moving the hard, cold, stiff fibers from the surface of the yarn, where they contact the user, to the core, where they are separated from the user by the wrap. While Chakravarti teaches the use of acrylic, he most certainly could have taught any of Applicant's admitted alternatives, since all would provide antimicrobial properties while improving softness and hand. Chakravarti is not concerned so much with the materials as he is the specific structure utilized.

Because of this, Examiner strongly disagrees with the argument that replacing acrylic with an alternative material would destroy Chakravarti. Replacing the acrylic of Chakravarti with an alternative material would most certainly still provide antimicrobial properties, while improving the softness and hand, all the requirements of Chakravarti.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


SRH

05 December 2006

Conferees:


Gary Welch


Alissa Hoey